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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 DANIEL KLEEGER, et al.,

4 Plaintiffs,

5 v.

16 Civ. 9517 (LAK)

6 WENDY EBER, et al.,

7 Defendants.

8 -----x
9 New York, N.Y.
May 18, 2021
4:00 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 BROOK & ASSOCIATES, PLLC
15 Attorneys for Plaintiffs
16 BY: BRIAN C. BROOK

17 UNDERBERG & KESSLER LLP
18 Attorneys for Defendants
19 BY: PAUL F. KENEALLY
20 COLIN D. RAMSEY

21 ALSO PRESENT:
22 JOHN HEBERT

23 (The Court and all parties appearing remotely)

24 THE COURT: Let's see. Do we have everyone?

25 Mr. Brook is for the plaintiffs, right?

MR. BROOK: Yes, your Honor.

THE COURT: OK. There you are.

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1 And Mr. Keneally for the defendants?

2 MR. KENEALLY: Yes, myself and Mr. Ramsey, Judge.

3 Thanks.

4 MR. RAMSEY: Good afternoon, your Honor.

5 THE COURT: Good afternoon, everybody.

6 When this case got filed five years ago, I remember
7 saying this may be the worst experience of everybody's life,
8 one of these family feud things, and I take it that the fact
9 that we're here and nothing has been resolved means perhaps I
10 was right, huh?

11 You don't have to comment on that. So I've read Judge
12 Carter's decision.

13 I just lost you here. I'll get you back.

14 You did a prestigious amount of work and all of you
15 must have as well. I looked at the pretrial order, and the
16 first thing that occurs to me is whether you've taken a
17 sufficiently serious look at whether there is any jury trial
18 right in this case, and if so, on exactly what.

19 I know you have a list of questions you say you would
20 like a jury to decide. But the question is, what, if any, part
21 of this case at common law would have been an action, would
22 have been an action at common law to be stayed.

23 I mean, I see all kinds of claims for breach of
24 fiduciary duty, which fundamentally is equitable, but
25 occasionally it can be regarded as an action of law. You've

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1 got an accounting claim, which normally is equitable. I
2 haven't tried to enumerate all the causes of action. I gather
3 there are ten of them.

4 What's the story here?

5 MR. BROOK: Well, your Honor, I'll start for
6 plaintiffs. I certainly am of the view that there is a lot
7 here that should not go to the jury. Everything having to do
8 with equitable relief is for the court to decide. And I think
9 to that point, that is one of the reasons why, quite unusually,
10 the plaintiffs moved for summary judgment on a lot of issues
11 here. There is also, for certain issues, there aren't really
12 any disputed issues of fact. But, unfortunately, for
13 reasons -- without intending any disrespect -- I don't entirely
14 understand, Judge Parker did not resolve some of those issues,
15 such as plaintiffs' standing, whether or not they are
16 shareholders as a result of certain actions that the deceased,
17 Lester Eber, took after the trust was ordered to be terminated.
18 That is one example.

19 But we actually have won on summary judgment on the
20 breach of fiduciary duty, on the core transaction in this case,
21 and it is our view that that is something that, you know, the
22 relief on that is not something for a jury trial, that the
23 court has found that the no further inquiry rule was violated,
24 and New York law is very clear on the consequences for that.
25 It is the beneficiaries who did not consent to the transaction,

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1 have the right to void the transaction regardless of the value,
2 regardless of whether it was fair, and to get back their
3 property, and if necessary, impose a constructive trust. And
4 given the number of years that apply here, we do believe that a
5 constructive trust is absolutely necessary.

6 THE COURT: Now, remind me of that transaction to
7 which that applies.

8 MR. BROOK: So that is a transaction -- so this was a
9 family business, a wine and liquor business in New York and
10 Connecticut, and the Connecticut business was all that was left
11 in 2012.

12 Starting in 2010, maybe 2009 -- the dates on the
13 documents are a little unclear -- Lester Eber, the president of
14 the company and also trustee of the trust, started loaning some
15 money to the company. Plaintiffs contend that is because it
16 didn't have enough money to pay its bills because Lester Eber
17 took millions of dollars out of the company from an earlier
18 merger deal in 2007 or so. But the reason is irrelevant for
19 now to your Honor's question.

20 The point is, there were a number of loans made. And
21 in 2012, without the company making any effort to change the
22 loans' terms or try to get some sort of a stay, Lester Eber
23 filed a lawsuit and sent a demand saying he needs to be repaid
24 and he wants to accept all of the corporation's stock in the
25 Connecticut entity in consideration of his loans, which total

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1 about \$3.5 million, according to defendants.

2 And then he proceeded to foreclose on it under the
3 UCC, without notice to a surrogate, without notice to the
4 beneficiaries of the trust. And he ended up taking ownership
5 of the entire remaining operating business for himself through
6 his own wholly owned company, which was originally named
7 Lester Eber LLC, but for reasons that are unclear, we believe
8 to conceal his identity, Alex Bay LLC, and then that moved in a
9 New York Supreme Court for sort of a stamp of approval that it
10 was fair under the -- that it was commercially reasonable under
11 the UCC Article 9, which, of course, is not the standard for a
12 fiduciary duty claim. It is a much lower bar.

13 And so with those set of facts, you know, given that
14 Lester was trustee of a trust that controlled this entity,
15 Judge Parker correctly found that that constituted a breach of
16 fiduciary duty as a matter of law, violating New York's no
17 further inquiry rule, or also known as the duty of undivided
18 loyalty. That says that the trustee cannot do a trust
19 transaction like that unless it is explicitly permitted by the
20 will or the trust instrument, or it is consented to by the
21 beneficiaries or it is approved by a court. Obviously, for
22 court approval, it has to be a court that knows there is a
23 trust in order to approve it, and that was not the case here.

24 So that is the transaction. That is really, the
25 biggest part of this case is getting my clients' ownership

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1 interest in what is their inheritance, their grandfather's
2 company that they founded, back to them.

3 THE COURT: And if that is set aside, then who owns
4 Eber Connecticut?

5 MR. BROOK: Eber Connecticut will still be owned by
6 the entity called Eber Metro, which would be owned, you know,
7 assuming that the court applies a constructive trust and
8 eliminates certain other transactions such as stock being
9 issued after this lawsuit was filed to try to dilute my
10 client's interest, my clients would own two-thirds of the two
11 levels up holding company that would have complete control over
12 each level down.

13 So the ultimate ownership of an 85 percent interest in
14 the Connecticut entity would be 66.6 percent my clients, and
15 then one third of the remaining one third would be Wendy Eber,
16 since she is one of -- the more striking things in this case,
17 apparently, they cut out Lester's own son from any rights into
18 this business as well, even though he is in the wine and liquor
19 business himself. Wendy Eber ended up -- I guess her father
20 changed his will at some point after that 2012 transaction to
21 name her as the sole beneficiary of this company, which she has
22 now been running, to my clients' dismay that it is continuing
23 on like this.

24 THE COURT: OK. Let's get back to my question,
25 though.

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1 MR. BROOK: I'm sorry.

2 THE COURT: Which causes of action are triable as of
3 right to a jury?

4 MR. BROOK: My understanding of the law -- and
5 obviously defendants can chime in here -- you know, is that the
6 fraudulent concealment claim is one that I believe there is a
7 right to a trial by jury. That is the only one where I think
8 there is actually a right as a matter of law.

9 And to the extent that, especially since Lester Eber
10 has passed and we have already won on the breach of fiduciary
11 duty claim, to the extent that the court orders a bench trial
12 on the remaining claims, plaintiffs would waive the fraudulent
13 concealment claim in order to move this thing along.

14 THE COURT: Which cause of action is the fraudulent
15 concealment claim?

16 MR. BROOK: I believe it is Count Seven, if I'm --
17 I don't have it open.

18 THE COURT: Tell me in a nutshell, what is Count
19 Seven?

20 MR. BROOK: Count Seven is the fact that -- so there
21 is a duty of disclosure for a trustee and for a corporate
22 officer. And in this case, Lester Eber was both a trustee and
23 a corporate officer with my client, and the trust as the
24 ultimate shareholders, he concealed this Alex Bay transaction
25 where he took ownership of it for several years. Right.

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1 One of my clients found out about it because there
2 were two other lawsuits where creditors who were defrauded as a
3 result of that transaction sued for it, and one of those
4 creditors ending up having a lawsuit reported on in the media.
5 That concealment potentially has caused significant damages in
6 terms of the lost profits and everything for the last few
7 years, for those years in the company.

8 Depending on the equitable relief granted, we may not
9 actually have any additional damages that are worth getting on
10 that.

11 THE COURT: What is the relief sought on Count Seven?

12 MR. BROOK: The relief sought is compensatory damages.
13 And, you know, I will confess, it is something where if we get
14 a constructive trust, and certainly if we get a win on the
15 faithless servant doctrine where Wendy and Lester Eber's
16 salaries have to be paid back as a result of their disloyal
17 conduct, then --

18 THE COURT: Well, that's a jury claim, isn't it?

19 MR. BROOK: I believe you're right, your Honor. Until
20 I was just going through it, I had forgotten that that is one
21 as well, you know, when the first date of disloyalty began.

22 Although in this case, at least as to Lester Eber, we
23 do already have a finding as a matter of law that he breached
24 his fiduciary duty at least as a trustee. I understand that
25 the faithless servant doctrine is more about employees, but it

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1 is possible that that is something that could be decided as a
2 matter of law.

3 THE COURT: Anything else sought on Count Seven,
4 except compensatory damages?

5 MR. BROOK: I'm sorry, yes, and punitive damages as
6 well.

7 At this point, we recognize -- although I haven't seen
8 any conclusive authority on it -- I believe that the law is
9 generally adverse to imposing punitive damages against an
10 estate because you can't punish someone who is dead. Since
11 Lester Eber has passed away, the remaining person would be
12 Wendy Eber.

13 Again, I think that at a certain point, we have a lot
14 of other claims and we have a lot of other ones where I believe
15 the compensatory damages will be extremely large. So my
16 clients' view, as I have talked to them about this, if it would
17 streamline things, we will waive the jury trial. We will waive
18 the claim on fraudulent concealment. In large part because,
19 you know, we asserted that claim before we knew that we were
20 going to win on the key part of Count One.

21 THE COURT: Are there any other causes of action in
22 which you seek other than equitable relief?

23 MR. BROOK: Yes, your Honor.

24 For the breach of fiduciary duty claim as well, we
25 seek punitive damages.

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1 THE COURT: Which count is that?

2 MR. BROOK: That is Count One.

3 Then as to Count Two, that is the faithless servant
4 doctrine, my understanding is that the relief there is
5 equitable and that is considered discouragement of all payments
6 received from the point of the first date of disloyalty. That
7 doesn't mean, however, necessarily that the relief is
8 equitable, that the claim isn't one that there is a jury right
9 to if there is disputed issues of fact.

10 THE COURT: Well, what relief do you seek on Count One
11 other than punitive damages?

12 MR. BROOK: We seek a number of transactions to be set
13 aside.

14 Primarily, count One is almost entirely seeking
15 equitable relief. Putting my clients back in a position they
16 were in, except for one transaction where it was -- this deal
17 in 2007, when Lester Eber essentially took millions of dollars
18 in consideration for selling the company for himself for a
19 consulting agreement. That ended up causing the company to
20 have to borrow money back from him that put it in the supposed
21 financial distress that they say, you know, caused all these
22 transactions.

23 So that money was a corporate opportunity. I mean,
24 they were selling all their assets to a competitor, and so that
25 is --

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1 THE COURT: It's like I push a button, counselor.

2 Count One fundamentally seeks to set aside
3 transactions. And in the bargain, you want punitive damages,
4 is that about right?

5 MR. BROOK: Yes, except for that one transaction I was
6 mentioning to your Honor, because the corporate opportunity
7 doctrine requires compensatory damages, I believe. And I think
8 that it probably is, although I honestly don't know for sure,
9 but I can see a good argument that the question of whether
10 something was a corporate opportunity is a mixed question of
11 law and fact that there might be a right to a jury trial on.

12 THE COURT: Look, whether something is a mixed
13 question of law or fact hasn't got anything to do, as I
14 understand it, with whether there is a right to a jury.

15 The question is, if this case had been brought in 1789
16 in the British courts, would it have been in chancery or would
17 it have been at law?

18 That's the question.

19 MR. BROOK: And now your Honor is admittedly testing
20 my recollection of what I learned in law school, but I believe
21 that the gist of this complaint is something -- that is
22 something that would be decided by a judge, because it has to
23 do with corporate and trust matters that are typically dealt
24 with even by a surrogate or a judge in a state court. I have
25 not seen too many jury trials.

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1 Plaintiffs' position -- and defense is welcome to step
2 in -- is that if your Honor decides that, you know, this is
3 something that should be decided on the bench, plaintiffs do
4 not disagree. That sounds right to us. I think it is a close
5 call, but it sounds right, given just all the case law,
6 especially with trust matters. That is almost always decided
7 solely by a judge without a jury.

8 THE COURT: Look, that is just not the test here.

9 MR. BROOK: I understand, your Honor. I apologize
10 that I'm not more knowledgeable about the specific test at this
11 time.

12 THE COURT: Mr. Keneally, I'll give you a shot on
13 this.

14 MR. KENEALLY: Mr. Ramsey will address that for us.
15 Thanks.

16 THE COURT: Mr. Ramsey.

17 MR. RAMSEY: Judge, well, I think the court, and to a
18 certain extent plaintiffs' counsel, has identified there are a
19 couple issues here that are jury. Fraudulent concealment has
20 been mentioned, faithless servant has been mentioned.

21 As we have laid out in the pretrial order, I know this
22 isn't directly what the court is asking, there is a lot of
23 factual issues that, at least in part, it's been our
24 position -- I believe Mr. Brook has not disagreed -- are
25 properly the province of the jury.

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1 THE COURT: But it is not the issue that determines
2 whether it is the province of the jury, it is whether the cause
3 of action is equitable or legal.

4 MR. RAMSEY: Understood, Judge.

5 I think the two the court has already touched on would
6 be at least two of the causes of action that would be entitled
7 to be tried by a jury.

8 THE COURT: Yes, but maybe I'm just not making myself
9 sufficiently clear.

10 I am told that the first count fundamentally seeks to
11 set aside the transaction. Is that an accurate statement?

12 MR. BROOK: Yes, your Honor.

13 THE COURT: OK. Now, doesn't any action to set aside
14 a transaction arise only on the equity side?

15 MR. BROOK: Yes, your Honor.

16 THE COURT: I'm talking to Mr. Ramsey.

17 MR. BROOK: I apologize.

18 MR. RAMSEY: I don't disagree with that narrow
19 construct, Judge. I agree with that.

20 But there is more I think Mr. Brook said to Count One
21 than just the set aside of the transfer.

22 THE COURT: Like what?

23 MR. RAMSEY: Like the punitive damage aspect of it.

24 THE COURT: Well --

25 MR. RAMSEY: And I believe --

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1 THE COURT: -- equity can award cleanup damages where
2 the damages are incidental to the equitable relief.

3 MR. RAMSEY: Understood, Judge.

4 That is not, perhaps, the best cause of action to
5 illustrate the right to a jury. I think the causes of action
6 directed towards fraudulent concealment and faithless servant
7 doctrine are better, cleaner examples of where a jury would be
8 appropriate.

9 THE COURT: Is there any relief sought on what you
10 both are calling the fraudulent concealment claim except
11 damages?

12 MR. BROOK: No, your Honor.

13 MR. RAMSEY: That's my understanding as well, your
14 Honor. They are seeking damages.

15 THE COURT: Are there any other causes of action that
16 seek only damages?

17 MR. BROOK: Well, I will say that Count Ten is a
18 little bit tricky. It is called equitable indemnification, so
19 I believe it is something where, you know, defense actually
20 suggested that that was an issue for your Honor. But it's also
21 called common law indemnification.

22 So that is one where it is actually a relatively small
23 amount of money having to do with just certain conduct that
24 forced one of the defendants to settle with us to get back into
25 this case. And per our settlement agreement, that company,

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1 Canandaigua National Bank, argues we have to pay their legal
2 fees. And we just think that we shouldn't have to pay the
3 legal fees when we didn't do anything wrong on that one.

4 So it is one where it is a serious question mark for
5 me, your Honor. My belief is that, despite the names given to
6 it, it is fundamentally just seeking -- actually, I'm going to
7 take all that back, your Honor.

8 That is an equitable claim and I'll tell you why. It
9 is because -- it just hit me -- what we need, actually, is a
10 continuing order. Because the jury can't tell us the amount of
11 money on that. So if jury can't give us a dollar amount, it is
12 not going to help us.

13 What we need is an order saying all of those bills
14 that are being sent to me by Canandaigua's lawyer should be
15 paid by the defendants instead, and that includes bills going
16 forward, to the extent they need to do more legal work on this.
17 That is sort of continuing relief that I believe is equitable
18 in nature.

19 THE COURT: Well, maybe it is a declaratory judgment.

20 MR. BROOK: The entire declaratory judgment count was
21 dismissed by Judge Parker as being punitive.

22 THE COURT: As you pleaded it.

23 MR. BROOK: Yes.

24 THE COURT: Look, I think the very first thing that
25 has to happen here is that I've got to ask you gentlemen to go

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1 back to square one on this and take each cause of action,
2 indicate what relief is sought, and state your positions with
3 authority as to whether that cause of action, bearing in mind
4 that damages can be appropriate in an equity action where it is
5 cleanup damages, as opposed to fundamentally a damage claim,
6 and whether it is triable as of right to a jury.

7 Because until we do that, we can't figure out whether,
8 fundamentally, we've got the same ball of facts at issue
9 throughout or nearly throughout that are facts that have to be
10 decided to determine the causes of action that are triable as a
11 right to a jury, or whether there should be a severance of a
12 couple of distinct claims that are law claims triable by jury
13 that don't implicate the facts that go to all the equity
14 claims, which would be a separate bench trial.

15 Then, of course, you both have to give it a little
16 more thought, I would suggest, as to even if there is some
17 right to a jury trial here, and even if this goes to a larger
18 part of the disputed facts than I think it might be, whether it
19 is in anybody's interest to try this case to a jury.

20 Because how do you suppose you would get across to
21 them all the facts that are in, for example, Judge Parker's
22 decision in any way that would be remotely comprehensible and
23 without putting nine of the 12 jurors, if we had that many, to
24 sleep?

25 I mean, do you want a reasonable decision or do you

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1 want luck of the draw? I mean, that is up to you. That is
2 your judgment. And I'm not putting down juries. I have to
3 tell you that in all my years on the bench, I have almost never
4 disagreed with a jury verdict, even in some very complicated
5 cases, but there are cases and there are cases.

6 So how much time do you need to get back to me on
7 this?

8 Speak to each other before you get back to me.

9 MR. BROOK: Yes, your Honor. And we have discussed
10 this very issue extensively. Probably what we discussed most
11 during the pretrial order stage in terms of what to do on this.

12 You know, I think a week, because plaintiffs
13 definitely want to move expeditiously. This case has been
14 pending for a long time and, you know, every minute, every day
15 that this continues to go on, there is risk that my clients
16 might not be able to get full relief if something unexpected
17 happens.

18 So I would ask for a week, and to make it a joint
19 submission, perhaps. And then if we disagree to have our
20 respective arguments under either each count.

21 THE COURT: How is that with you, Mr. Ramsey?

22 MR. RAMSEY: That's fine, Judge. I can make that
23 work.

24 THE COURT: That's good.

25 Really go back to first principles on what the Seventh

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1 Amendment means. I'm serious about that.

2 OK. Now, for the sake of discussion, assuming this
3 case were to be all tried through a jury, how long a trial are
4 we looking at?

5 MR. BROOK: In plaintiffs' view, it should be about a
6 week, I think, which is relatively -- I don't know if your
7 Honor thinks it needs to be much longer than that. But the
8 defense has a number of witnesses that I think are going to
9 testify on matters that are completely irrelevant, largely
10 having to do with how the company was in financial distress,
11 which is not something that is really disputed.

12 There were all sorts of liabilities to a pension fund
13 and such like that, that couldn't be paid because Lester had
14 taken so much money out of the company. So he loaned it money.
15 All that stuff just goes to why did Lester Eber do the Alex Bay
16 transaction, which has already been determined to be a breach
17 of fiduciary duty.

18 I don't see why we need to have a parade of
19 accountants. I think there is at least four different
20 accountants, in addition to Wendy Eber, who was the chief
21 financial officer of the company, that the defense wants to
22 call to just sort of talk about this stuff.

23 I do worry it is just a lot of smoke and mirrors, take
24 an already complicated case for a jury, and make it seem like
25 they are going to throw up their hands. I know that is a

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1 common defense tactic in a white collar case, and judges tend
2 to clamp down on that. I never honestly tried a breach of
3 fiduciary case in front of a jury in a civil matter. I don't
4 know how much additional leeway your Honor would give them to
5 make their case.

6 For our perspective, if your Honor determines that to
7 be relevant, we would just ask that it be limited to one
8 accountant or something. Hopefully that can shorten it. We
9 don't want to give the defense any issues for appeal. Because
10 the last thing we would want to do is to obtain the equitable
11 relief we are entitled to as a matter of New York law and have
12 them get a stay issued because there is a substantial question
13 for a stay pending appeal.

14 THE COURT: Well, I think the first thing we need to
15 do is resolve the jury trial issue. So let's get that. And in
16 the meantime, you might give some thought to whether there are
17 some motions in limine that might be productive. A, on the
18 supervision it is fundamentally nonjury, and B, on the
19 assumption that it is a jury. I'm not going to set a timetable
20 for that, but I think we need to be sure where the jury trial
21 comes in.

22 Is there any hope that this will settle, without
23 getting into terms?

24 MR. RAMSEY: Judge, I raised that with Mr. Brook, and
25 really, from the onset of this case, we have repeatedly said

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1 that we are more than interested in talking. And that interest
2 remains, and we have extended that invite to Mr. Brooks on
3 multiple occasions.

4 My understanding is he and his clients are just not
5 interested at this point, or if they are, it is with a certain
6 set of preconditions going into any type of settlement
7 discussion.

8 MR. BROOK: Your Honor, that is just not true.

9 We called last week or so, where I explicitly said,
10 here is what plaintiffs' settlement offer is at that time. It
11 was based in large part on a third party that has come forward
12 and said they are interesting in buying the company. They saw
13 Judge Parker's order. They see the writing on the wall what is
14 going to happen.

15 I'm not going to get into the numbers on it. Suffice
16 it to say, the defense did not put forward an offer, as much as
17 we settled with the last codefendant, who is deceased, who was
18 just a side player in this whole thing.

19 So we are incredibly far apart, your Honor, is part of
20 the problem, by a scale of, you know, at least 25 to one in
21 terms of where plaintiffs' ask is and what the defense's last
22 offer was. So I think it should settle, but we're not sure.

23 THE COURT: I'm not going to get into the details of
24 that, unless and until the jury part is out. That's very
25 pivotal for a lot of reasons.

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1 If you decide, regardless of where the rights are with
2 respect to the jury trial, you want a nonjury trial, I won't
3 get involved in the settlement at all. If we're going to do
4 this the other way, we'll see what it looks like.

5 OK. I'm not sure there is too much more to discuss,
6 except trial scheduling. The last time I looked at this, which
7 was yesterday, we are still operating on the basis that we have
8 five COVID-safe courtrooms to share among 35 or 40 judges, and
9 you have to book them a long time in advance. It is not first
10 come, first served. There are a series of priorities that are
11 applied by a committee that determines who gets to go to trial
12 and who doesn't. If you're not an incarcerated defendant in a
13 criminal case, the chances are you're not going to trial for a
14 while. So that's where we are.

15 Now, if, with this relaxation that we seem to be
16 experiencing, goes further, that may change and I may have
17 control of my calendar back. If it's nonjury, there is more
18 flexibility. Because last I heard, in a nonjury case without
19 any people in the courtroom, I think I may be able to go
20 forward with something like that. But I'm not really sure
21 about that.

22 I also have my own criminal calendar, and that is, to
23 some extent, defendants still waiting for trials. So I would
24 like to get this over with, but I'm not a free agent.

25 So let's get this jury trial thing worked out. OK?

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1 MR. BROOK: OK.

2 MR. RAMSEY: Yes, Judge.

3 THE COURT: Anything else I can do for you today?

4 MR. BROOK: I suppose one thing I would ask for is --
5 this is probably something your Honor can't do -- do you have
6 any sort of ballpark sense, if we end up having a jury trial,
7 approximately when your Honor would try to schedule that for?

8 THE COURT: I'm not in a position to tell you that
9 now. There are a number of things affecting my calendar.

10 MR. BROOK: As far as your Honor presiding over a
11 bench trial, is there a sense as to approximately when that
12 could happen?

13 I need to talk to my clients to be sure they are
14 willing to waive a jury demand, which may streamline some of
15 this process as well.

16 THE COURT: Well, it sure isn't going to be before
17 Labor Day.

18 MR. BROOK: OK.

19 THE COURT: It could be in that last part of the year.

20 MR. BROOK: OK. Thank you, your Honor.

21 THE COURT: OK. Anything on your end, Mr. Keneally?

22 MR. KENEALLY: No. Thank you, your Honor.

23 THE COURT: OK. Well, thank you all.

24 I look forward, assuming we're going to try the case,
25 to doing it with you.

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1 All right. Take care, and I'll eagerly await the
2 submissions on the jury issue.

3 MR. KENEALLY: Thank you, Judge.

4 MR. BROOK: Thank you, your Honor.

5 (Adjourned)